

CITY BOARD OF ZONING APPEAL #2363

DATE: August 12, 2003 **SCHEDULED FOR PUBLIC HEARING:** August 22, 2003

LOCATION: Generally located at S. 31th Street Court and Sequoia Drive.

ADDRESS: 5433 S. 31st Street Court.

LEGAL DESCRIPTION: Lot 22, block 5, Briarhurst West 4th Addition.

APPLICANT: Pat McGrane
5433 S. 31st Street Court
Lincoln, NE
(402)416-1961

LOT AREA: Approximately 10,578 square feet, more or less.

ZONING: R-1, Residential

EXISTING LAND USE: Single Family Residential

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-1, Residential
South:	Residential	R-1, Residential
East:	Residential	R-1, Residential
West:	Residential	R-1, Residential

TYPE OF APPEAL:

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE.

Section 27.71.110, L.M.C. allows uncovered decks, which do not extend more than three feet above or below the adjacent ground elevation to project into a required side or rear yard, provided these projections be at least two feet from the adjacent side lot line. A variance of the allowed height from three (3) feet to six (6) feet is requested.

STAFF FINDINGS:

1. This is a request to allow an uncovered deck greater than three feet in height to project into the required rear yard setback.
2. The lot is in the Briarhurst West Community Unit Plan Special Permit #643. The applicant could have applied for an amendment of the special permit to modify the setback requirements to allow decks to project into the rear yard. This waiver to the rear yard setback can be specific to decks only when amending the community unit

plan. The Zoning Ordinance requires that all other means be exhausted prior to making an application to the Board of Zoning Appeals. It appears that in this case, all other options have not been explored.

3. The house is a one story with a daylight basement in a cul-de-sac. There is a 6' high opaque privacy fence that was locked. Due to this, entry could not be made into the backyard for viewing and assessment. From the limited view, it appears that the yard slopes toward the rear of the lot. The slope is not significant nor debilitating enough to prevent the construction of a deck that meets code requirements. The assessor's website indicated a deck was built in 1986.
4. The applicant indicates that the existing deck is already in violation of the setback. The Building and Safety Department can address this issue.
5. Other lots in the area are substantially similar to this lot. Houses in the neighborhood vary from one story to multi-level and two story. On this block there is a mix of one and multi-level houses. Many of the houses in the area do not have decks, but rather have patios off the back of the house. The few houses with decks appear to meet the code requirement for maximum height and projection. The other houses on lots at the curve of the cul-de-sac are setback similarly to this property.
6. The applicant indicated that they would like to build a deck 6' above grade. The applicant stated that the property is unusual due to the elevation drop from the front to the backyard, the house is on the curve of a cul-de-sac and has a low, shallow back yard. The applicant indicated that the existing deck is 6' above grade and the new portion of the deck will maintain the same height.
7. Because the lot is on a curve of the cul-de-sac, the lot does have a shorter depth on one side, which is unusual, but not inconsistent with other cul-de-sac lots in the neighborhood. It is, however, unusual when compared to lots platted in newer neighborhoods. There is now a subdivision requirement that all lot lines be right angles to the centerline of the street. Apparently this was either waved with this subdivision, or prior to the requirement.
8. Deck height is restricted to three feet above grade because a structure higher than three feet becomes obtrusive to neighboring properties and a privacy issue, regardless of the opinion of the current neighbors.
9. It appears that this request is for the convenience of the applicant, so that the applicant may drain the hot tub into the house drain rather than the backyard.
10. The Board of Zoning Appeals is empowered to grant variances "to the extent

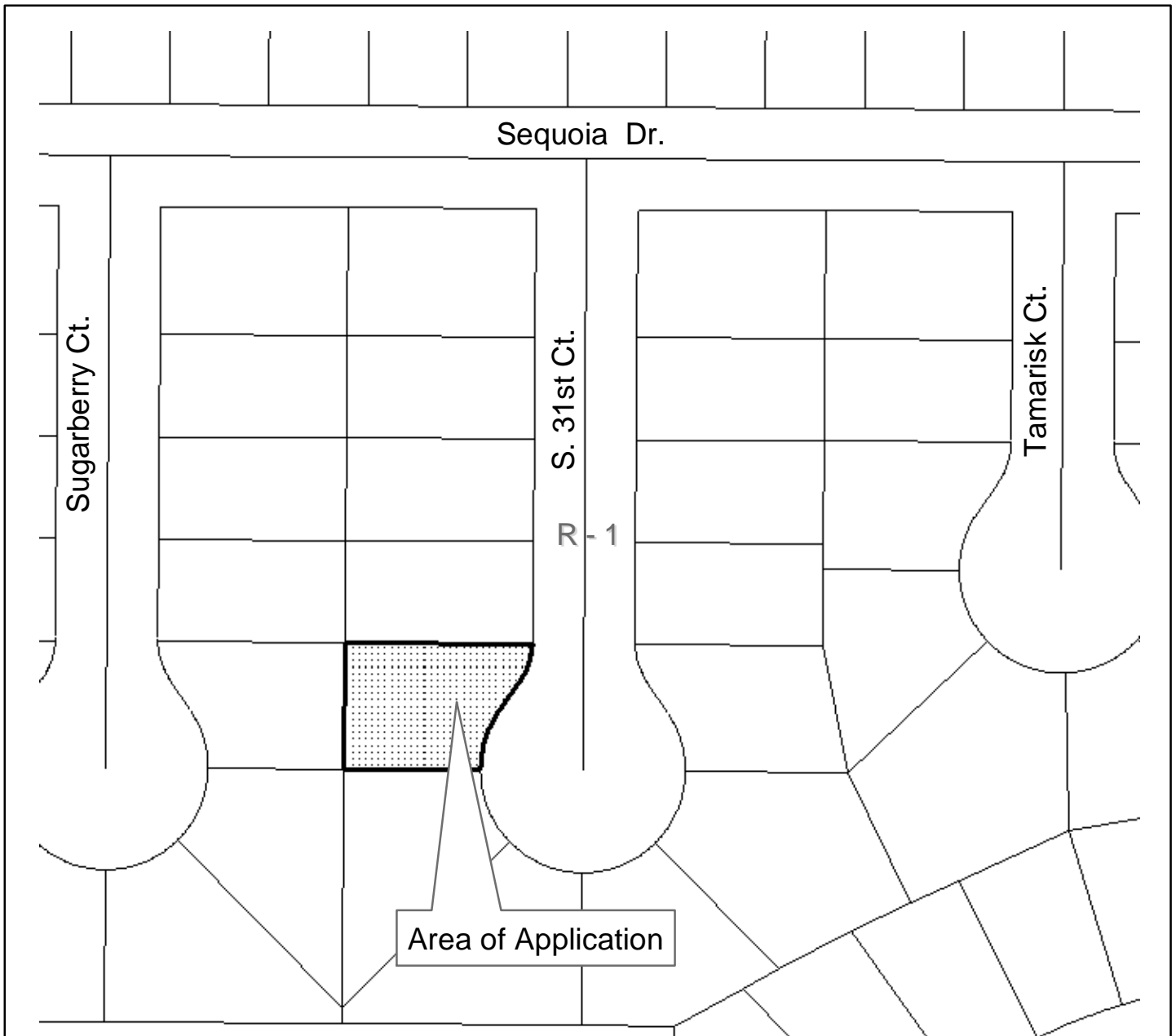
necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.”

11. If this appeal were not granted, the owners could erect an uncovered deck, not exceeding three feet in height, in the required rear yard setback, not less than two feet from the side lot line.

Prepared by

Becky Horner
Planner

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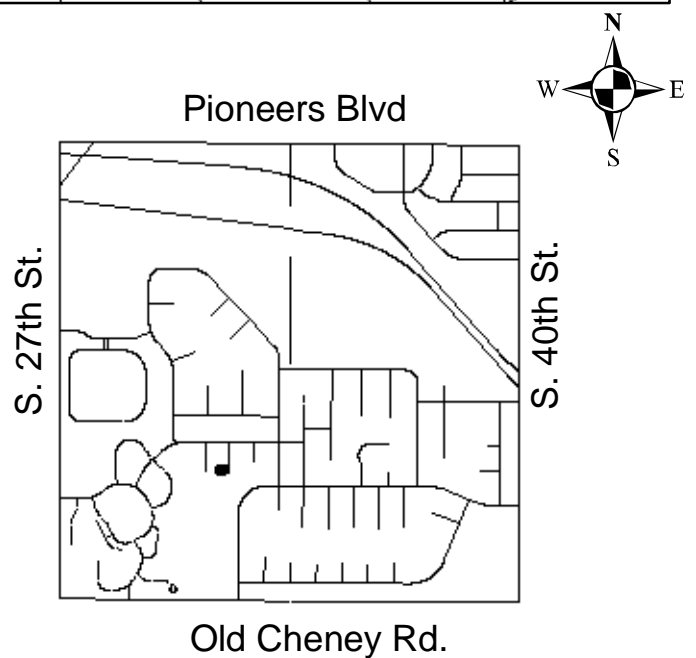
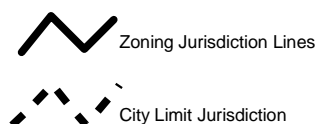


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Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 7 T9N R7E





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Lincoln City - Lancaster County Planning Dept.
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